

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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www.montgomerycountymd.gov/content/council/boa/index.asp

Case No. A-6302

PETITION OF MALLICK ENTERPRISES LLC

(Hearing held October 14, 2009)

OPINION OF THE BOARD

(Effective date of Opinion, November 20, 2009)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-5.35(b). The petitioner proposes the construction of a second-story addition that requires a variance of ten (10) feet as it is with zero (0) feet of the side lot line. The required side lot line setback is ten (10) feet.

The petitioner was represented by Jody Kline, Esquire, and Larry Frank, an architect, at the public hearing.

The subject property is Lot 17, Block F, Montgomery County Airpark Industrial Sites, located at 8010 Cessna Avenue, Gaithersburg, Maryland, 20879, in the 1-4 Zone (Tax Account No. 01972017).

Decision of the Board: Requested variance **Granted**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes the construction of an 80.08 x 35.38 foot second-story addition.
2. The subject property was originally platted as a one acre lot and it was similar in size and shape to the surrounding properties. The subject property was later replatted in 1979 into two 0.5 acre lots with a 30-foot common ingress/egress easement that straddles the common lot line running down the center of the original Lot 9. The subject property received a variance in 2003 to construct a one-story addition and the proposed second-story addition will be built on the existing first-floor footprint. See Exhibit Nos. 4 [site plan], 7 [photographs], 8 [BOA Opinion], and 9(a) [zoning vicinity map].

3. The subject property was originally zoned I-1, which required no side yard setback. The subject property was later rezoned to I-4 in 1985, which requires a ten foot side yard setback. The minimum lot size for the I-4 Zone is two acres. The narrowness of the subject property precludes new construction in either its front or rear yards and severely constrains vehicle movement on the lot. The proposed addition would be built on the existing one-story addition and will not expand the footprint of the first-floor structure. See Exhibit Nos. 12 [rendered site plan] and 13 [proposed second-story elevation].
4. Mr. Mallick testified that he shares the ingress and egress to the site with his neighbor on the adjoining Lot 18 and that the height of the existing one-story addition must accommodate a parapet wall for fire code purposes.
5. Mr. Frank testified that the typical buildings in the immediate area are two-story and that the proposed addition would be a pre-finished metal system similar to the existing structures in the area. Mr. Frank testified that the visual effect of the second-story addition would be to add the bulk of a two-thirds story to the existing building.

FINDINGS OF THE BOARD

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

- (a) *By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The Board finds that the subject property was originally zoned as I-1 property and later rezoned as an I-4 property. The Board finds that the subject property is a ½ acre lot in a zone that has a minimum lot size of two acres. The Board finds that the proposed second-story addition will be built on the existing first floor footprint and will not expand or increase the existing first floor footprint. The Board finds that these are exceptional circumstances peculiar to the subject property and that the strict application of zoning regulations will result in practical difficulties to and an undue hardship upon the property owner.

- (b) *Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the variance requested for the construction of a second-story addition is the minimum reasonably necessary.

- (c) *Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The Board finds that the proposed addition will continue the industrial use of the property and that the variance will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

- (d) *Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The Board finds that the variance will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variance of ten (10) feet from the required ten (10) foot side lot line setback for the construction of a second-story addition is granted subject to the following conditions:

1. The petitioner shall be bound by all of his testimony and exhibits of record, the representations of his attorney and the testimony of his witness, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4 and 5(a) and 5(b).

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Stanley B. Boyd, seconded by David K. Perdue, with Carolyn J. Shawaker and Catherine G. Titus, Chair, in agreement, and with Walter S. Booth, recused, the Board adopted the foregoing Resolution.

Catherine G. Titus
Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 20th day of November, 2009.

Katherine Freeman
Executive Director

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.